



DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926

[Docket No. OSHA-2013-0005]

RIN 1218-AC77

Updating OSHA Standards Based on National Consensus Standards; Signage

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Occupational Safety and Health Administration (“OSHA” or “the Agency”) proposes to update its general industry and construction signage standards by adding references to the latest versions of the American National Standards Institute (“ANSI”) standards on specifications for accident prevention signs and tags, ANSI Z535.1-2006(R2011), Z535.2-2011, and Z535.5-2011. OSHA also is proposing to retain the existing references to the earlier ANSI standards, ANSI Z53.1-1967, Z35.1-1968, and Z35.2-1968, in its signage standards, thereby providing employers an option to comply with the updated or earlier standards. In addition, OSHA is proposing to incorporate by reference Part VI of the Manual of Uniform Traffic Control Devices (“MUTCD”), 1988 Edition, Revision 3, into the incorporation-by-reference section of the construction standards, having inadvertently omitted this edition of the MUTCD from this section during an earlier rulemaking, and amend citations in two provisions of the construction standards to show the correct incorporation-by-reference section. In addition, OSHA is publishing a direct final rule in today’s Federal Register adding the same references.

DATES: Submit comments on this proposed rule (including comments on the information-collection (paperwork) determination described under the section titled **PROCEDURAL DETERMINATIONS**, hearing requests, and other information by [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. All submissions must bear a postmark or provide other evidence of the submission date (the following section titled **ADDRESSES** describes the available methods of making submissions).

ADDRESSES: Submit comments, hearing requests, and other information as follows:

- Electronic. Submit comments electronically to <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.
- Facsimile. OSHA allows facsimile transmission of comments and hearing requests that are 10 pages or fewer in length (including attachments). Send these documents to the OSHA Docket Office at (202) 693-1648; OSHA does not require hard copies of these documents. Instead of transmitting facsimile copies of attachments that supplement these documents (e.g., studies, journal articles), commenters must submit these attachments to the OSHA Docket Office, Technical Data Center, Room N-2625, OSHA, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210. These attachments must clearly identify the sender's name, date, subject, and docket number (i.e., OSHA-2013-0005) so that the Agency can attach them to the appropriate document.

- Regular mail, express delivery, hand delivery, and messenger (courier) service.

Submit comments and any additional material (e.g., studies, journal articles) to the OSHA Docket Office, Docket No. OSHA-2013-0005 or RIN 1218-AC77, Technical Data Center, Room N-2625, OSHA, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210; telephone: (202) 693-2350. (OSHA's TTY number is (877) 889-5627.) Note that security procedures may result in significant delays in receiving comments and other written materials by regular mail. Contact the OSHA Docket Office for information about security procedures for delivery of materials by express delivery, hand delivery, and messenger service. The hours of operation for the OSHA Docket Office are 8:15 a.m. to 4:45 p.m., e.t.

- Instructions. All submissions must include the Agency name and the OSHA docket number (i.e., OSHA Docket No. OSHA-2013-0005). OSHA will place comments and other material, including any personal information, in the public docket without revision, and these materials will be available online at <http://www.regulations.gov>. Therefore, the Agency cautions commenters about submitting statements they do not want made public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

OSHA invites comment on all issues related to this proposed rule. The Agency also welcomes comments on its findings that this proposed rule would have no negative economic, paperwork, or other regulatory impact on the regulated community. This proposed rule is the companion document of a direct final rule published in the "Rules" section of today's Federal Register. If OSHA receives no significant adverse comments

on the proposed rule or direct final rule, the Agency will publish a Federal Register notice confirming the effective date of the final rule and withdrawing this companion proposed rule. The final rule may include minor stylistic or technical corrections of the direct final rule. For the purpose of judicial review, OSHA considers the date that the Agency confirms the effective date of the final rule to be the date of issuance. If, however, OSHA receives any significant adverse comments on the direct final rule or this proposal, the Agency will publish a timely withdrawal of the direct final rule and proceed with this proposed rule, which addresses the same revisions of its signage standards.

- Docket. The electronic docket for this proposed rule established at <http://www.regulations.gov> lists most of the documents in the docket. Some information (e.g., copyrighted material), however, cannot be read or downloaded through this web site. All submissions, including copyrighted material, are accessible at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

FOR FURTHER INFORMATION CONTACT:

General information and press inquiries: Contact Frank Meilinger, OSHA, Office of Communications, Room N-3647, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210; telephone: (202) 693-1999.

Technical inquiries: Contact Kenneth Stevanus, Directorate of Standards and Guidance, Room N-3609, OSHA, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210; telephone: (202) 693-2260; fax: (202) 693-1663.

SUPPLEMENTARY INFORMATION:

Copies of this Federal Register notice. Electronic copies of this Federal Register notice are available at <http://www.regulations.gov>. This Federal Register notice, as well

as news releases and other relevant information, also are available at OSHA's webpage at <http://www.osha.gov>.

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I. Direct Final Rulemaking

In a direct final rulemaking, an agency publishes a direct final rule in the Federal Register along with a statement that the rule will become effective unless the agency receives any significant adverse comments within a specified period. The agency also publishes concurrently with the direct final rule an identical proposed rule. If the agency receives no significant adverse comments, the direct final rule will become effective. However, should the agency receive any significant adverse comments, the agency will withdraw the direct final rule and treat the comments as submissions on the proposed rule.

OSHA uses direct final rules to update existing consensus standards when it expects the rulemaking to be noncontroversial; when the rule provides protection to employees that is at least equivalent to the protection afforded to them by the previous standard-development organization standard; and when the rule imposes no significant

new compliance costs on employers (69 FR 68283, 68285 (2004)). OSHA used direct final rules previously to update or, when appropriate, revoke references to previous national consensus standards in OSHA rules (see, e.g., 69 FR 68283 (2004); 70 FR 76979 (2006); 76 FR 75782 (2011); and 77 FR 37587 (2012)).

For the purposes of a direct final rule, a significant adverse comment is one that “explains why the rule would be inappropriate, including challenges to the rule’s underlying premise or approach, or why it would be ineffective or unacceptable without a change” (see 60 FR 43108, 43111(1995)). In determining whether a comment necessitates withdrawal of the direct final rule, OSHA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. OSHA will not consider a comment recommending additional revisions to a rule to be a significant adverse comment unless the comment states why the direct final rule would be ineffective without the revisions. If OSHA receives a timely significant adverse comment, it will publish a Federal Register notice withdrawing the direct final rule no later than 90 days after the publication date of this current notice.

This notice of proposed rulemaking (NPRM) furthers the objectives of Executive Order 13563, which requires that the regulatory process “promote predictability and reduce uncertainty” and “identify and use the best, most innovative and least burdensome tools for achieving regulatory ends.” As described below, the revisions will make the requirements of OSHA’s signage standards consistent with the most recent national consensus standards, thereby increasing employers’ compliance flexibility without compromising employee safety (for the purposes of this rulemaking, the term “signage standards” refers to standards that regulate both signs and tags). Accordingly, the

Agency concludes that updating the references to the national consensus standards in its signage standards is consistent with, and promotes the objectives of, Executive Order 13563.

II. Background

In June 2009, the National Electrical Manufacturers Association (NEMA) contacted OSHA and, based on a letter from ANSI, requested that the Agency add references to the latest versions of ANSI's Z535 series of standards to OSHA's signage standards. Letter dated June 2, 2009, from Kyle Pitsor, Vice President, Government Relations, NEMA, to Richard Fairfax, Director, Directorate of Enforcement Programs, OSHA (Ex. OSHA-2013-0005-0003, p. 1), attaching a letter dated May 28, 2009, from Geoffrey Peckham, Chair, ANSI Z535.2 Subcommittee, to Mr. Fairfax (Ex. OSHA-2013-0005-0003, p. 3). NEMA specifically advocated incorporating by reference ANSI Z535.2, "Environmental and Facility Safety Signs," in OSHA standards that refer to old¹ versions of this ANSI standard. Pitsor letter (Ex. OSHA-2013-0005-0003, p. 1); accord Peckham letter (Ex. OSHA-2013-0005-0003, p. 3).

Over the next few years, OSHA staff met with NEMA several times to discuss the association's request that OSHA adopt ANSI's Z535 series of standards. Besides urging OSHA to incorporate ANSI Z535.2 by reference, NEMA also asked the Agency to update its standards' references to ANSI Z53.1-67, "Safety Color Code for Marking Physical Hazards and the Identification of Certain Equipment," by citing the current version of this standard, ANSI Z535.1, "Safety Colors." As a result of these meetings and as recorded in a second letter to OSHA, NEMA provided the Agency with side-by-

¹The terms "old" and "older," as used in this Federal Register notice, refer specifically to signs or tags that comply with ANSI Z53.1-1967, Z35.1-1968, and Z35.2-1968.

side comparisons of ANSI Z35.1-68, Z535.2-2007, and Z535.2-2011, and ANSI Z53.1-67, Z535.1-2006, and Z535.1-2006(R2011), and other relevant materials such as signs, which OSHA evaluated. Letter dated March 30, 2011, from Evan Gaddis, President and CEO, NEMA, to Dr. David Michaels, Assistant Secretary of Labor for Occupational Safety and Health; Side-by-Side Comparisons of ANSI standards; NEMA Signage Materials (Exs. OSHA-2013-0005-0004 through -0006). OSHA also subsequently considered whether it should also incorporate by reference ANSI Z535.5, “Safety Tags and Barricade Tapes (for Temporary Hazards),” into those OSHA standards that refer to a much older version of this ANSI standard.

At present, employers continue to use the old signs and tags not only because they are long-lasting and rarely need replacing, but also because they comply with OSHA’s current signage standards, which incorporate the old ANSI standards by reference. Both NEMA and ANSI contend that incorporating the new ANSI standards by reference is necessary to encourage employers to buy and use signs and tags that comply with these standards without receiving a de minimis notice for failure to comply with the old ANSI standards.² Pitsor letter (Ex. OSHA-2013-0005-0003, p. 1); Peckham letter (Ex. OSHA-2013-0005-0003, p. 3).

NEMA and ANSI further assert that signs and tags meeting the latest version of the ANSI standards, the Z535 series, provide an equal or greater level of protection than

²According to OSHA’s Field Operations Manual (FOM), a de minimis condition occurs when “[a]n employer has implemented a measure different than the one specified in a standard, that has no direct or immediate relationship to safety or health.” FOM, CPL 02-00-150, Ch. 4, § VIII, pp. 4-36 to 4-37 (Apr. 22, 2011), available on OSHA’s Web page. OSHA issues no citations or penalties for these conditions, but compliance officers will document the condition during an inspection. Id. at 4-36. See, also, Letter of Interpretation dated February 22, 2011, from Thomas Galassi, Director, Directorate of Enforcement Programs, OSHA, to Richard A. Eichel, ATA Safety, describing OSHA’s de minimis enforcement policy with regard to ANSI signs; available at http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=27641.

the currently required signs that comply with the old ANSI standards, Z35.1, Z35.2, and Z53.1, cited in OSHA's standards. Pitsor letter (Ex. OSHA-2013-0005-0003, p. 1); Peckham letter (Ex. OSHA-2013-0005-0003, p. 3). In its letter, ANSI provides an exhibit demonstrating why it believes the new Z535.2-2007 signs are at least as protective as the old Z35.1 signs (Peckham letter, Ex. OSHA-2013-0005-0003, p. 10 (Peckham's Ex. 6)).³ The exhibit, which compares the information contained in the two sets of signs, shows that the new Z535.2 signs typically have at least as much information as the old, Z35.1, signs. Moreover, the new ANSI safety-color standard, ANSI Z535.1-2006(2011), includes two safety colors, brown and gray, that were not in Z53.1-1967. See ANSI Z535.1-2006(2011), pp. v-vi (ANSI also added safety blue in the 1979 revision after deleting this color in the 1971 revision).

ANSI and NEMA also claim that the new signs provide additional information, including the specific identity of the hazard, a description of how serious the hazard is, how to avoid the hazard, and the probable consequences of not avoiding the hazard. Peckham letter (Exs. OSHA-2013-0005-0003, pp. 7-9, and OSHA-2013-0005-0006, pp. 9-11). ANSI further argues that the old sign formats "lack the ability to contain [the] symbols, more extensive word messages, multiple messages, and additional languages" necessary to communicate critical safety information to an increasingly multicultural work force. Id., pp. 6 and 9-10. NEMA also submitted an ANSI timeline of the institute's standards, and the safety signs that complied with those standards, for the years 1914 to 2011; this timeline illustrates additions made to the information contained in these signs during this period. NEMA Signage Materials, pp. 6-8 (Ex. OSHA-2013-0005-0006). Based on the available record, OSHA believes that the new signs are at least

³This exhibit is actually Exhibit 6 of the Peckham letter, but is mislabeled as Exhibit 5.

as protective as the old ones. Therefore, this NPRM is proposing to incorporate the ANSI Z535 series by reference in the applicable OSHA signage standards so that employers will be able to buy and use the new signs without the prospect of receiving de minimis notices for using noncompliant signs. OSHA invites the public to comment on its conclusion that the new signs are as effective as the old ones.

III. Summary and Explanation of Revisions to the Signage Standards

As discussed in a previous Federal Register notice (69 FR 68283 (2004)), OSHA is undertaking a series of projects to update its standards to incorporate the latest versions of national consensus and industry standards. These projects include updating or removing national consensus and industry standards cited in existing OSHA standards, updating the text of standards that OSHA adopted directly from previous national consensus standards, and, when appropriate, replacing specific references to previous national consensus and industry standards with performance requirements.

This NPRM proposes to update the references to ANSI consensus standards in four provisions of OSHA's general industry and construction standards: 29 CFR 1910.97, Nonionizing radiation; §1910.145, Specifications for accident prevention signs and tags; §1910.261, Pulp, paper, and paper board mills; and §1926.200, Accident prevention signs and tags. These provisions incorporate by reference ANSI consensus standards Z53.1-1967, "Safety Color Code for Marking Physical Hazards and the Identification of Certain Equipment"; Z35.1-1968, "Specifications for Accident Prevention Signs"; and Z35.2-1968, "Specifications for Accident Prevention Tags." The NPRM would allow employers to comply with either these ANSI standards or the latest versions of them, Z535.1-2006(R2011), Z535.2-2011, and Z535.5-2011. The latter

compliance option would allow employers to update their signage based on the newest ANSI consensus standards without violating OSHA's requirements. In addition, since employers would not have to update their signage, there would be no additional compliance cost or burden resulting from this rulemaking. The NPRM would revise the above four provisions in the following ways:

(1) OSHA's general industry standard on nonionizing radiation at §1910.97(a)(3)(ii) requires employers to use the color specification provided by ANSI Z53.1-1953, "Safety Color Code for Marking Physical Hazards," which OSHA incorporated by reference under §1910.6 in 1974 (39 FR 23502 (1974)). Currently, §1910.6 refers to ANSI Z53.1-1967, "Safety Color Code for Marking Physical Hazards and the Identification of Certain Equipment" because, on March 7, 1996, OSHA incorporated ANSI Z53.1-1967 by reference under §1910.6 without revising the reference to ANSI Z53.1-1953 in §1910.97(a)(3)(ii) (see 61 FR 9228, 9232 (1996)). In addition, OSHA did not obtain approval from the Office of the Federal Register during the 1996 rulemaking to incorporate ANSI Z53.1-1967 by reference under §1910.6. With this NPRM, OSHA would correct this oversight by incorporating ANSI Z53.1-1967 by reference under §1910.6 after obtaining approval to do so from the Office of the Federal Register. In addition, this NPRM would update the nonionizing radiation provision by incorporating ANSI Z535.1-2006(R2011), "Safety Colors," by reference. This addition would allow employers to comply with the 1967 version or the 2006(R2011) version of the cited ANSI standard.

(2) OSHA's general industry standard on specifications for accident-prevention signs and tags at §1910.145 refers to ANSI standard Z53.1-1967, "Safety Colors for

Marking Physical Hazards and the Identification of Certain Equipment,” which §1910.6 incorporated by reference in three places: §§1910.145(d)(2), Danger signs; 1910.145(d)(4), Caution signs; and 1910.145(d)(6), Safety instruction signs. However, as noted above, the Office of the Federal Register did not approve ANSI Z53.1-1967 for incorporation by reference under §1910.6. Therefore, this NPRM would correct this oversight by incorporating that ANSI standard by reference under §1910.6 after receiving approval from the Office of the Federal Register to do so.

Each of the three cited provisions of §1910.145(d) specifies the colors employers must use for each type of sign, and requires that the signs meet the specifications in Table 1, “Fundamental Specification of Safety Colors for CIE Standard Source ‘C,’” of ANSI Z53.1-1967. The NPRM would update each of these sections by referencing Table 1, “Specification of the Safety Colors for CIE Illuminant C and the CIE 1931, 2° Standard Observer,” of ANSI Z535.1-2006(R2011), “Safety Colors,” which it incorporates by reference. This addition would allow employers to comply with the 1967 version or the 2006(R2011) version of the cited ANSI standard.

(3) OSHA’s general industry standard on pulp, paper, and paper board mills at §1910.261 refers to ANSI Z35.1-1968, “Specifications for Accident Prevention Signs,” which §1910.6(e)(59) incorporates by reference in two places. First, §1910.261(c)(16) refers to this 1968 ANSI standard. The NPRM would update §1910.261(c)(16) by incorporating ANSI Z535.2-2011, “Environmental and Facility Safety Signs,” by reference in §1910.6(e)(60). This addition would allow employers to comply with the 1968 version or the 2011 version of the cited ANSI standard.

Second, §1910.6(e)(59) incorporates Z35.1-1968, “Specifications for Accident Prevention Signs,” by reference in §1910.261(a)(3)(xxiv). However, on June 18, 1998, as part of an OSHA rulemaking, the Agency removed subsection §1910.261(a)(3)(xxiv) from the pulp, paper, and paper board mills standard, but did not remove the reference to §1910.261(a)(3)(xxiv) in §1910.6(e)(59). The NPRM would correct this oversight.

(4) OSHA’s construction standard on accident prevention signs and tags, §1926.200, refers to ANSI standards Z35.1-1968, “Specifications for Accident Prevention Signs”; Z35.2-1968, “Specifications for Accident Prevention Tags”; or Z53.1-1967, “Safety Color Code for Marking Physical Hazards and the Identification of Certain Equipment,” in five places discussed below.⁴ In addition, as discussed below, §1926.200 would incorporate by reference Part VI of the MUTCD, 1988 Edition, Revision 3.

The first reference to one of these old ANSI standards is in §1926.200(b)(1), Danger signs, which refers to Figure G-1, which is identical to Figure 1 in ANSI Z35.1-1968, “Specifications for Accident Prevention Signs.” The second reference is in §1926.200(c)(1), Caution signs, which refers to Figure G-2, which is identical to Figure 4 in the same ANSI standard. The NPRM would remove Figures G-1 and G-2 from §1926.200(b)(1) and (c)(1), and update these provisions by referencing the appropriate figures from ANSI Z35.1-1968 and ANSI Z53.1-1967, “Safety Color Code for Marking Physical Hazards and the Identification of Certain Equipment.” These revisions, therefore, would give employers the option of using the figures from either ANSI standard.

The third reference to an old ANSI standard is in §1926.200(c)(3), which refers to ANSI Z53.1-1967, “Safety Color Code for Marking Physical Hazards and the Identification of Certain Equipment.”

⁴ Although §1926.200(c)(3) currently refers to ANSI Z53.1-1967, OSHA did not incorporate that ANSI standard by reference under §1926.6. This NPRM, therefore, would correct this oversight by incorporating ANSI Z53.1-1967 by reference under §1926.6.

Identification of Certain Equipment.” This OSHA provision specifies the colors employers must use in caution signs, and requires that the signs meet the specifications in Table 1 of ANSI Z53.1-1967. This NPRM would update §1926.200(c)(3) by adding a reference to Table 1 of ANSI Z535.1-2006(R2011), “Safety Colors,” the latest version of Z53.1-1967. This addition, therefore, would allow employers to use either Table 1 of Z53.1-1967 or Table 1 of Z535.1-2006(R2011).

The fourth reference to an old ANSI standard is in §1926.200(h)(2), Accident prevention tags, which says that specifications for accident-prevention tags similar to the specifications in Table G-1 apply; OSHA based Table G-1 on Figures 1 to 4 in ANSI Z35.2-1968, “Specifications for Accident Prevention Tags.” The NPRM would remove Table G-1 from §1926.200(h)(2), and update this provision by referencing Figures 1 to 4 of ANSI Z35.2-1968 and Figures 1 to 8 of Z535.5-2011, “Safety Tags and Barricade Tapes (for Temporary Hazards).” These revisions, therefore, would give employers the option of using the figures from either ANSI standard.

The fifth reference to the old ANSI standards is in §1926.200(i), which refers to ANSI Z35.1-1968, “Specifications for Accident Prevention Signs,” and Z35.2-1968, “Specifications for Accident Prevention Tags.” Section 1926.200(i) requires employers to follow these two ANSI standards with respect to OSHA rules not specifically prescribed in 29 CFR 1926, subpart G. This NPRM would update §1926.200(i) by adding Z535.2-2011, “Environmental and Facility Safety Signs,” and Z535.5-2011, “Safety Tags and Barricade Tapes (for Temporary Hazards),” the latest versions of the cited ANSI standards, as references. These additions would allow employers to comply with Z35.1-1968 or Z535.2-11 for signs, and Z35.2-1968 or Z535.5-11 for tags.

This NPRM also would update paragraph (g)(2) of §1926.200 by removing the language referring to the Director of the Federal Register's approval for incorporation by reference of Part VI of the 1988 Edition, Revision 3, of the MUTCD, and adding a reference to §1926.6 instead (i.e., this reference indicates such approval). Additionally, in an earlier rulemaking (see 75 FR 47906, 48132 (2010)), OSHA inadvertently removed Part VI of the MUTCD from §1926.6. This NPRM would correct this oversight by returning the reference to Part VI of the MUTCD to §1926.6; it also would remove the reference to §1926.200(g)(2) as the incorporation-by-reference provision in §1926.201(a) and §1926.202, and replace it with a reference to §1926.6.

In summary, OSHA believes, based on the discussion above under **BACKGROUND**, that many general industry and construction employers currently comply with the ANSI signage requirements incorporated by reference in its existing signage standards, i.e., ANSI Z35.1-1968, Z35.2-1968, and Z53.1-1967. Therefore, OSHA is proposing to retain these requirements in its signage standards. OSHA also determined that the latest editions of the ANSI signage standards, i.e., Z535.1-2006(R2011), Z535.2-2011, and Z535.5-2011, provide at least as effective protection to employees as the old ANSI standards incorporated by reference in the Agency's signage standards. Accordingly, this NPRM would give employers the option of complying with the old or the new ANSI standards. Since employers could choose to comply with OSHA's existing signage standards, incorporating the new ANSI standards by reference would not increase the cost or burden of compliance.

IV. Procedural Determinations

A. Legal Considerations

The purpose of the Occupational Safety and Health Act of 1970 (OSH Act), 29 U.S.C. 65-78, is to assure, as far as possible, safe and healthful working conditions for all employees. 29 U.S.C. 651(b). To achieve this goal, Congress authorized the Secretary of Labor to promulgate and enforce occupational safety and health standards. 29 U.S.C. 654(b), 655(b). A safety or health standard is a standard that “requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes reasonably necessary or appropriate to provide safe or healthful employment and places of employment.” 29 U.S.C. 652(8). A standard is reasonably necessary or appropriate within the meaning of Section 652(8) of the OSH Act when a significant risk of material harm exists in the workplace and the proposed standard would substantially reduce or eliminate that workplace risk. See Industrial Union Department, AFL-CIO v. American Petroleum Institute, 448 U.S. 607 (1980). OSHA has already determined that requirements specified by signage standards, including design requirements, are reasonably necessary or appropriate within the meaning of Section 652(8) (see, e.g., 49 FR 49726, 49737 (1978); 51 FR 33251, 33251-33259 (1986)).

This NPRM would neither reduce employee protection nor alter an employer's obligations under the existing standards. Under this NPRM, employers would be able to continue to use the same signs and tags they are using currently to meet their compliance obligations under the existing standards' design-criteria requirements. This NPRM would provide employers with additional options for meeting the design-criteria requirements for signage protection. Therefore, this NPRM would not alter the substantive protection that employers must provide to employees or impose a new compliance burden on employers. Accordingly, OSHA need not, in this rulemaking, determine significant risk

or the extent to which this NPRM would reduce that risk, as typically required by Industrial Union Department.

B. Preliminary Economic Analysis and Regulatory Flexibility Act Certification

This NPRM is not economically significant within the context of Executive Order 12866, or a major rule under the Unfunded Mandates Reform Act or Section 801 of the Small Business Regulatory Enforcement Fairness Act. In addition, this NPRM complies with Executive Order 13563. The rulemaking imposes no additional costs on any private-sector or public-sector entity, and does not meet any of the criteria for an economically significant or major rule specified by the Executive Order or relevant statutes.

This rulemaking would allow employers increased flexibility in choosing signage for the protection of their employees. This NPRM, however, would not require an employer to update or replace its signage solely as a result of this rule if the employer's current signage protection meets the revised standards. Because the NPRM imposes no costs, OSHA certifies that it would not have a significant economic impact on a substantial number of small entities.

C. OMB Review Under the Paperwork Reduction Act of 1995

This rulemaking does not impose new information-collection requirements for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-30. Accordingly, the Agency does not have to prepare an Information Collection Request in association with this rulemaking.

Members of the public may respond to this paperwork determination by sending their written comments to the Office of Information and Regulatory Affairs, Attn: OSHA

Desk Officer (RIN 1218-AC77), Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503. The Agency encourages commenters to submit these comments to the rulemaking docket, along with their comments on other parts of this NPRM. For instructions on submitting these comments and accessing the docket, see the sections of this Federal Register notice titled **DATES** and **ADDRESSES**. OSHA, however, will not consider any comment received on this paperwork determination to be a “significant adverse comment” as specified above under the section titled **DIRECT FINAL RULEMAKING**.

To make inquiries, or to request other information, contact Mr. Todd Owen, Directorate of Standards and Guidance, OSHA, Room N-3609, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210; telephone (202) 693-2222.

D. Federalism

OSHA reviewed this NPRM in accordance with the Executive Order on Federalism (Executive Order 13132, 64 FR 43255, August 10, 1999), which requires that agencies, to the extent possible, refrain from limiting state policy options, consult with states prior to taking any actions that would restrict state policy options, and take such actions only when clear constitutional authority exists and the problem is national in scope. Executive Order 13132 provides for preemption of state law only with the expressed consent of Congress. Agencies must limit any such preemption to the extent possible.

Under Section 18 of the OSH Act, 29 U.S.C. 667, Congress expressly provides that states may adopt, with Federal approval, a plan for the development and enforcement of occupational safety and health standards (29 U.S.C. 667); OSHA refers to states that

obtain Federal approval for such a plan as “State-Plan states.” Occupational safety and health standards developed by State-Plan states must be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. Subject to these requirements, State-Plan states are free to develop and enforce under state law their own requirements for occupational safety and health standards.

While OSHA drafted this NPRM to protect employees in every state, Section 18(c)(2) of the OSH Act permits State-Plan states and U.S. territories to develop and enforce their own standards for signage protection provided these requirements are at least as effective in providing safe and healthful employment and places of employment as the requirements specified in this NPRM.

In summary, this NPRM complies with Executive Order 13132. In states without OSHA-approved state plans, this rulemaking limits state policy options in the same manner as other OSHA standards. In State-Plan states, this rulemaking does not significantly limit state policy options because, as explained in the following section, State-Plan states do not have to adopt any final standard developed from this NPRM.

E. State-Plan States

When Federal OSHA promulgates a new standard or amends an existing standard to make it more stringent, the 27 states or U.S. territories with their own OSHA-approved occupational safety and health plans must revise their standards to reflect the new standard or amendment, or show OSHA why such action is unnecessary, e.g., because an existing state standard covering this area is at least as effective in protecting workers as the new Federal standard or amendment. 29 CFR 1953.5(a). In this regard, the state standard must be at least as effective as the final Federal rule. State-Plan states must

adopt the Federal standard or complete their own standard within six months of the publication date of the final Federal rule. When OSHA promulgates a new standard or amendment that does not impose additional or more stringent requirements than the existing standard, State-Plan states need not amend their standards, although OSHA may encourage them to do so. The following 21 states and 1 U.S. territory have OSHA-approved occupational safety and health plans that apply only to private-sector employers: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming. In addition, Connecticut, Illinois, New Jersey, New York, and the Virgin Islands have OSHA-approved state plans that apply only to state and local government employees.

This NPRM would not impose any additional or more stringent requirements on employers compared to existing OSHA standards. This NPRM proposes to incorporate by reference three recent editions of the applicable national consensus standards in OSHA's existing signage protection standards. This NPRM would not require employers to update or replace their signage solely as a result of this rulemaking if their current signage meets the requirements of this NPRM. OSHA believes that adding the new references to ANSI Z535.1-2006(R2011), ANSI Z535.2-2011, and ANSI Z535.5-2011, while retaining the current references to ANSI Z35.1-1968, Z35.2-1968, and Z53.1-1967, would impose no additional compliance obligations on employers because employers can continue using their existing signage and, when necessary, update their signage and not be out of compliance.

Therefore, this NPRM does not require action under 29 CFR 1953.5(a), and State-Plan states do not need to adopt this rule or show OSHA why such action is unnecessary. However, to the extent these State-Plan states have the same standards as the OSHA standards affected by this NPRM, OSHA encourages them to adopt the amendments that may result from this rulemaking.

F. Unfunded Mandates Reform Act of 1995

OSHA reviewed this NPRM according to the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1501-1571, and Executive Order 12875, 58 FR 58093 (1993). 75 FR 48130; 2010. As discussed above in Section IV.B (“Final Economic Analysis and Regulatory Flexibility Certification”) of this preamble, OSHA determined that this NPRM imposes no additional costs on any private-sector or public-sector entity. Accordingly, this NPRM requires no additional expenditures by either public or private employers.

As noted above under Section IV.E (“State-Plan States”) of this preamble, OSHA standards do not apply to state or local governments except in states that elected voluntarily to adopt an OSHA-approved state plan. Consequently, this NPRM does not meet the definition of a “Federal intergovernmental mandate” (see Section 421(5) of the UMRA, 2 U.S.C. 658(5)). Therefore, for the purposes of the UMRA, OSHA certifies that this NPRM does not mandate that state, local, or tribal governments adopt new, unfunded regulatory obligations, or increase expenditures by the private sector of more than \$100 million in any year.

G. Consultation and Coordination with Indian Tribal Governments

OSHA reviewed this NPRM in accordance with Executive Order 13175, 65 FR 67249 (2000), and determined that it does not have “tribal implications” as defined in that order. This NPRM does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

H. Consultation with the Advisory Committee on Construction Safety and Health

Under 29 CFR parts 1911 and 1912, OSHA must consult with the Advisory Committee on Construction Safety and Health (“ACCSH” or “the Committee”), established pursuant to Section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. 3701-3708, in setting standards for construction work. Specifically, §1911.10(a) requires the Assistant Secretary to provide ACCSH with a proposed rule (along with pertinent factual information), and give the Committee an opportunity to submit recommendations. See, also, §1912.3(a) (“[W]henver occupational safety or health standards for construction activities are proposed, the Assistant Secretary [for Occupational Safety and Health] shall consult the Advisory Committee”).

On March 18, 2013, OSHA presented to the ACCSH a draft of this NPRM, as well as a table comparing the current regulatory text with the proposed regulatory text for the provisions of 29 CFR 1926.200 subject to this rulemaking. OSHA explained that it was proposing to update these provisions by allowing employers to comply with either the older ANSI standards, Z35.1-1968, Z35.2-1968, and Z53.1-1967, or the latest ANSI standards, Z535.1-006(R2011), Z535.2-2011, and Z535.5-2011. The ACCSH subsequently recommended that OSHA proceed with the proposed rule to update

§1926.200 (a transcript of these proceedings is available at Docket No. OSHA-2013-0005-0007, pp. 41-46). ACCSH members also suggested that OSHA consider replacing the illustrations of the old signs and tags it is removing from §1926.200(b)(1), (c)(1), and (h)(2) with the new ones, or a combination of the old ones and the new ones. *Id.* at 21-23. OSHA will consider this suggestion for a future rulemaking.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210, authorized the preparation of this NPRM. OSHA is issuing this NPRM pursuant to 29 U.S.C. 653, 655, and 657; 5 U.S.C. 553; 40 U.S.C. 3701-3708; Secretary of Labor's Order 1-2012, 77 FR 3912 (2012); and 29 CFR part 1911.

List of Subjects in 29 CFR Parts 1910 and 1926

Construction, General industry, Occupational safety and health, Safety, Signs, Tags.

Signed at Washington, DC, on June 5, 2013.

David Michaels,
Assistant Secretary of Labor for Occupational Safety and Health.

Proposed Amendments to Standards

For the reasons stated above in the preamble, the Occupational Safety and Health Administration is proposing to amend 29 CFR parts 1910 and 1926 as follows:

PART 1910—[AMENDED]

Subpart A—[Amended]

1. The authority citation for subpart A of part 1910 continues to read as follows:

AUTHORITY: 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 3-2000 (65 FR 50017), 5-2002 (67 FR 65008), 5-2007 (72 FR 31159), 4-2010 (75 FR 55355), or 1-2012 (77 FR 3912), as applicable.

Sections 1910.6, 1910.7, 1910.8 and 1910.9 also issued under 29 CFR 1911. Section 1910.7(f) also issued under 31 U.S.C. 9701, 29 U.S.C. 9a, 5 U.S.C. 553; Public Law 106-113 (113 Stat. 1501A-222); Pub. L. 11-8 and 111-317; and OMB Circular A-25 (dated July 8, 1993) (58 FR 38142, July 15, 1993).

2. Amend §1910.6 as follows:

- a. Revise paragraphs (e)(59) and (e)(65);
- b. Redesignate paragraphs (e)(66) through (e)(77) as paragraphs (e)(68) through (e)(79);
and
- c. Add paragraphs (e)(66) and (e)(67).

§1910.6 Incorporation by reference.

* * * * *

(e) * * *

(59) ANSI Z35.1-1968, Specifications for Accident Prevention Signs; IBR approved for §1910.261(c). Copies available for purchase from the IHS Standards Store, 15 Inverness Way East, Englewood, CO 80112; telephone: 1-877-413-5184; Web site: www.global.ihs.com.

* * * * *

(65) USAS Z53.1-1967 (also referred to as ANSI Z53.1-1967), Safety Color Code for Marking Physical Hazards, ANSI approved October 9, 1967; IBR approved for §1910.97(a) and 1910.145(d). Copies available for purchase from the IHS Standards Store, 15 Inverness Way East, Englewood, CO 80112; telephone: 1-877-413-5184; Web site: www.global.ihs.com.

(66) ANSI Z535.1-2006(R2011), Safety Colors, reaffirmed July 19, 2011; IBR approved for §§1910.97(a) and 1910.145(d). Copies available for purchase from the International Safety Equipment Association, 1901 North Moore Street, Arlington, VA 22209-1762; telephone: 703-525-1695; fax: 703-528-2148; Web site: www.safetysigns.org.

(67) ANSI Z535.2-2011, Environmental and Facility Safety Signs, published September 15, 2011; IBR approved for §1910.261(c). Copies available for purchase from the International Safety Equipment Association, 1901 North Moore Street, Arlington, VA 22209-1762; telephone: 703-525-1695; fax: 703-528-2148; Web site: www.safetysigns.org.

* * * * *

Subpart G—[Amended]

3. Revise the authority citation for subpart G of part 1910 to read as follows:

AUTHORITY: 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 3-2000 (65 FR 50017), 5-2002 (67 FR 50017), 5-2007 (72 FR 31159), 4-2010 (75 FR 55355), or 1-2012 (77 FR 3912), as applicable; and 29 CFR part 1911.

4. Amend §1910.97 by revising paragraph (a)(3)(ii) to read as follows:

§1910.97 Nonionizing radiation.

* * * * *

(a) * * *

(3) * * *

(ii) ANSI Z53.1-1967 or ANSI Z535.1-2006(R2011), incorporated by reference in §1910.6, is for use for color specification. All lettering and the border shall be of aluminum color.

* * * * *

Subpart J—[Amended]

5. Revise the authority citation for subpart J of part 1910 to read as follows:

AUTHORITY: 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 3-2000 (65 FR 50017), 5-2007 (72 FR 31159), 4-2010 (75 FR 55355), or 1-2012 (77 FR 3912), as applicable.

Sections 1910.141, 1910.142, 1910.145, 1910.146, and 1910.147 also issued under 29 CFR part 1911.

6. Amend §1910.145 by revising paragraphs (d)(2), (d)(4), and (d)(6) to read as follows:

§1910.145 Specifications for accident prevention signs and tags.

* * * * *

(d) * * *

(2) Danger signs. The colors red, black, and white shall be those of opaque glossy samples as specified in Table 1, “Fundamental Specification of Safety Colors for CIE Standard Source ‘C,’” of ANSI Z53.1-1967 or in Table 1, “Specification of the Safety Colors for CIE Illuminant C and the CIE 1931, 2° Standard Observer,” of ANSI Z535.1-2006(R2011), incorporated by reference in §1910.6.

* * * * *

(4) Caution signs. The standard color of the background shall be yellow; and the panel, black with yellow letters. Any letters used against the yellow background shall be black. The colors shall be those of opaque glossy samples as specified in Table 1 of ANSI Z53.1-1967 or Table 1 of ANSI Z535.1-2006(R2011), incorporated by reference in §1910.6.

* * * * *

(6) Safety instruction signs. The standard color of the background shall be white; and the panel, green with white letters. Any letters used against the white background shall be

black. The colors shall be those of opaque glossy samples as specified in Table 1 of ANSI Z53.1-1967 or in Table 1 of ANSI Z535.1-2006(R2011), incorporated by reference in §1910.6.

* * * * *

Subpart R—[Amended]

7. Revise the authority citation for subpart R of part 1910 to read as follows:

AUTHORITY: 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 5-2007 (72 FR 31159)), 4-2010 (75 FR 55355), or 1-2012 (77 FR 3912), as applicable; and 29 CFR part 1911.

8. Amend §1910.261 by revising paragraph (c)(16) to read as follows:

§1910.261 Pulp, paper, and paperboard mills.

* * * * *

(c) * * *

(16) Signs. When conveyors cross walkways or roadways in the yards, the employer must erect signs reading “Danger—Overhead Conveyor” or an equivalent warning, in accordance with ANSI Z35.1-1968 or ANSI Z535.2-2011, incorporated by reference in §1910.6.

* * * * *

PART 1926—[AMENDED]

Subpart A—[Amended]

9. The authority citation for subpart A of part 1926 continues to read as follows:

AUTHORITY: 40 U.S.C. 333; 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 6-96 (62 FR 111), 5-2007 (72 FR 31160), 4-2010 (75 FR 55355), or 1-2012 (77 FR 3912), as applicable; and 29 CFR part 1911.

10. Amend §1926.6 as follows:

- a. Revise paragraph (h)(24);
- b. Redesignate paragraphs (h)(27) through (h)(30) as (h)(31) through (h)(34) and paragraph (u)(1) as (u)(2);
- c. Add paragraphs (h)(27) through (h)(30), and (u)(1); and
- d. Revise newly redesignated paragraph (u)(2).

§1926.6 Incorporation by reference.

* * * * *

(h) * * *

(24) ANSI Z35.1-1968, Specifications for Accident Prevention Signs; IBR approved for §1926.200(b), (c), and 1 (i). Copies available for purchase from the IHS Standards Store, 15 Inverness Way East, Englewood, CO 80112; telephone: 1-877-413-5184; Web site: www.global.ihs.com.

* * * * *

(27) USA Z53.1-1967 (also referred to as ANSI Z53.1-1967), Safety Color Code for Marking Physical Hazards, ANSI approved October 9, 1967; IBR approved for §1926.200(c). Copies available for purchase from the IHS Standards Store, 15 Inverness Way East, Englewood, CO 80112; telephone: 1-877-413-5184; Web site: www.global.ihs.com.

(28) ANSI Z535.1-2006(R2011), Safety Colors, reaffirmed July 19, 2011; IBR approved for §1926.200(c). Copies available for purchase from the International Safety Equipment Association, 1901 North Moore Street, Arlington, VA 22209-1762; telephone: 703-525-1695; fax: 703-528-2148; Web site: www.safetyequipment.org.

(29) ANSI Z535.2-2011, Environmental and Facility Safety Signs, published September 15, 2011; IBR approved for §1926.200(b), (c), and (i). Copies available for purchase from the International Safety Equipment Association, 1901 North Moore Street, Arlington, VA 22209-1762; telephone: 703-525-1695; fax: 703-528-2148; Web site: www.safetysigns.org.

(30) ANSI Z535.5-2011, Safety Tags and Barricade Tapes (for Temporary Hazards), published September 15, 2011, including Errata, November 14, 2011; IBR approved for §1926.200(h) and (i). Copies available for purchase from the International Safety Equipment Association, 1901 North Moore Street, Arlington, VA 22209-1762; telephone: 703-525-1695; fax: 703-528-2148; Web site: www.safetysigns.org.

* * * * *

(u) * * *

(1) Manual on Uniform Traffic Control Devices (MUTCD), Part VI, Standards and Guides for Traffic Controls for Street and Highway Construction, Maintenance, Utility, and Incident Management Operation, 1988 Edition, Revision 3, September 3, 1993; IBR approved for §§1926.200(g), 1926.201(a), and 1926.202. Electronic copies of the MUTCD, 1988 Edition, Revision 3, are available for downloading at http://www.osha.gov/doc/highway_workzones/mutcd/index.html.

(2) Manual on Uniform Traffic Control Devices (MUTCD), Millennium Edition, Dec. 2000; IBR approved for §§1926.200(g), 1926.201(a), and 1926.202. Electronic copies of the MUTCD 2000 are available for downloading at http://mutcd.fhwa.dot.gov/kno-millennium_12.18.00.htm.

* * * * *

Subpart G—[Amended]

11. Revise the authority citation for subpart G of part 1926 to read as follows:

AUTHORITY: 40 U.S.C. 333; 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 3-2000 (65 FR 50017), 5-2002 (67 FR 65008), 5-2007 (72 FR 31159), 4-2010 (75 FR 55355), or 1-2012 (77 FR 3912), as applicable; and 29 CFR part 1911.

12. Amend §1926.200 by revising paragraphs (b)(1), (c)(1), (c)(3), (g)(2), (h)(2), and (i) to read as follows:

§1926.200 Accident prevention signs and tags.

* * * * *

(b) Danger signs. (1) Danger signs shall be used only where an immediate hazard exists, and shall follow the specifications provided in Figure 1 of ANSI Z35.1-1968 or in Figure 2 of ANSI Z535.2-2011, incorporated by reference in §1926.6.

* * * * *

(c) Caution signs. (1) Caution signs shall be used only to warn against potential hazards or to caution against unsafe practices, and shall follow the specifications provided in Figure 4 of ANSI Z35.1-1968 or in Figure 2 of ANSI Z535.2-2011, incorporated by reference for the sections specified in §1926.6.

* * * * *

(3) The standard color of the background shall be yellow; and the panel, black with yellow letters. Any letters used against the yellow background shall be black. The colors shall be those of opaque glossy samples as specified in Table 1 of ANSI Z53.1-1967 or in Table 1 of ANSI Z535.1-2006(R2011), incorporated by reference in §1926.6.

* * * * *

(g) * * *

(2) All traffic control signs or devices used for protection of construction workers shall conform to Part VI of the MUTCD, 1988 Edition, Revision 3, or Part VI of the MUTCD, Millennium Edition, incorporated by reference in §1926.6.

(h) * * *

(2) For accident prevention tags, employers shall follow specifications that are similar to those in Figures 1 to 4 of ANSI Z35.2-1968 or Figures 1 to 8 of ANSI Z535.5-2011, incorporated by reference in §1926.6.

(i) Additional rules. ANSI Z35.1-1968, ANSI Z535.2-2011, ANSI Z35.2-1968, and ANSI Z535.5-2011, incorporated by reference in §1926.6, contain rules in addition to those specifically prescribed in this subpart. The employer shall comply with ANSI Z35.1-1968 or ANSI Z535.2-2011, and ANSI Z35.2-1968 or Z535.5-2011, with respect to such additional rules.

13. Amend §1926.201 by revising paragraph (a) to read as follows:

§1926.201 Signaling.

(a) Flaggers. Signaling by flaggers and the use of flaggers, including warning garments worn by flaggers, shall conform to Part VI of the Manual on Uniform Traffic Control Devices (1988 Edition, Revision 3, or the Millennium Edition), incorporated by reference in §1926.6.

* * * * *

14. Revise §1926.202 to read as follows:

§1926.202 Barricades.

Barricades for protection of employees shall conform to Part VI of the Manual on Uniform Traffic Control Devices (1988 Edition, Revision 3, or the Millennium Edition), incorporated by reference in §1926.6.

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